UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ESAU TORRES MENDOZA and all others similarly situated under 29 U.S.C. 216(B),	§ § § §	
Plaintiff,	§ §	
v.	§ §	Civil Action No. 3:10-cv-02436-G ECF
DETAIL SOLUTIONS LLC f/k/a UPTOWN DETAIL AND SPA and CAROLE AUSTEIN, Independent Executrix of the Estate of Charles Austein,	§ § § § §	
Defendants.	§ §	

DEFENDANT DETAIL SOLUTIONS' RESPONSE TO
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendant Detail Solutions, LLC f/k/a Uptown Detail and Spa ("Detail Solutions" or "Defendant") submits this Response to Plaintiff's Motion for Partial Summary Judgment under Federal Rule of Civil Procedure 56 and Local Rules 7.1, 7.2, and 56.3 of the U.S. District Court for the Northern District of Texas.

I.
SUMMARY

Plaintiff moves for partial summary judgment ("Plaintiff's Motion") and requests rulings that (1) this Court has subject matter jurisdiction under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA"), (2) Charles Austein was a joint employer with Detail Solutions under the FLSA, and (3) Plaintiff is entitled to back pay damages under his retaliation claim despite his status as an undocumented worker. Detail Solutions opposes Plaintiff's Motion on the following grounds:

First, Plaintiff's Motion is objectionable because it simply restates his arguments previously submitted by Plaintiff in response to Defendant's fully briefed summary judgment motion ("Defendant's MSJ").   It provides no new evidence or argument regarding Detail Solutions and appears to be nothing more than an attempt to have the final word on the issues raised in Defendant's MSJ.

Second, for the reasons stated in Defendant's MSJ, Plaintiff cannot raise a genuine issue of material fact as to the lack of FLSA coverage as to Plaintiff's claims (both under the individual and enterprise coverage prongs of the FLSA).

Third, for the reasons stated in Defendant's MSJ, it is undisputed that Plaintiff is an undocumented worker ineligible to work in the United States and, as a result, Plaintiff is barred as matter of law from recovering back wages or any damages under the FLSA.

II.
MATERIAL ACCOMPANYING THIS RESPONSE

Defendant has simultaneously filed an Objection to Plaintiff's Motion for Partial Summary Judgment and Brief in Support to Same. Defendant also incorporates by reference the arguments, evidence, and objections submitted in its Brief (DE #75), Appendix (DE #76) and Reply (DE #85) filed in Support of Defendant's Motion as if fully set forth herein. Defendant's prior briefing includes arguments, authority and evidence that are fully responsive to Plaintiff's Motion. In accordance with Local Rule 56.6, the declarations, deposition excerpts, and other evidence supporting this Response are contained in the Appendix previously filed in conjunction with Defendant's Motion and incorporated herein by reference.

WHEREFORE, Defendant Detail Solutions prays that Plaintiff's Motion for Partial Summary Judgment be denied. Detail Solutions also prays for such additional relief as the Court deems just and proper.

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Respectfully submitted,

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ATTORNEYS FOR DEFENDANT DETAIL SOLUTIONS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served upon all counsel of record this 21st day of September, 2012, via first class mail as follows:

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